



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

November 9, 1998

Mr. Thomas P. Brandt
Fanning, Harper & Martinson
8117 Preston Road
Dallas, Texas 75225

OR98-2650

Dear Mr. Brandt:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID # 119298.

Collin County (the county) has received a request for all information reflecting the county's representation or the county's use of funds to provide for the representation of Crum and Forster and the Green River Insurance Company. You claim that the requested information is excepted from required public disclosure by sections 552.103, 552.107, and 552.111 of the Government Code. We have considered the exceptions you claim and have reviewed the documents at issue, Exhibit B.

Section 552.103(a) excepts from disclosure information:

- (1) relating to litigation of a civil or criminal nature or settlement negotiations, to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party; and
- (2) that the attorney general or the attorney of the political subdivision has determined should be withheld from public inspection.

The county has the burden of providing relevant facts and documents to show that the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *University of Tex. Law Sch. v. Texas Legal Found.*, 958 S.W.2d 479, 481 (Tex. App.--Austin 1997, no pet.); *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 at 4 (1990). The county must meet both prongs of this test for information to be excepted under 552.103(a). You have marked the information you seek to withhold.

You explain that a lawsuit has been filed against Crum and Forster and The North River Insurance Company. *Brown v. Crum and Forester*, No. D98-3425 (193rd Dist. Ct. Dallas County, Tex.). You have provided this office with a copy of the complaint in the suit. The lawsuit concerns the bond executed by Collin County Justice of the Peace Tom Kelly as principal in his capacity as a justice and the insurance company as the surety. You indicate that Judge Kelly is the real party interest in the suit and may be included as a defendant in the matter as the principal on the bond. We find that you have shown that litigation is reasonably anticipated. We find that the requested information relates to the anticipated litigation. *Texas Legal Found.*, 958 S.W.2d at 483. You may withhold the information you have marked under section 552.103. The remaining information must be released to the requestor.

Generally, however, once information has been obtained by all parties to the litigation through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). Thus, information that has either been obtained from or provided to the opposing party in the anticipated litigation is not excepted from disclosure under section 552.103(a), and it must be disclosed. Further, the applicability of section 552.103(a) ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

Because we make a determination under section 552.103, we need not address your additional arguments against disclosure. We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Don Ballard
Assistant Attorney General
Open Records Division

JDB\nc

Ref: ID# 119298

Enclosures: Submitted documents

cc: Frederick Brown
533 Park Lane
Richardson, Texas 75081
(w/o enclosures)